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(3)

No. 07-235

FILED
OCT 18 2007
OFFICE OF THE CLERK
SUPREME COURT

In The

# Supreme Court of the United States

WAYNE J. DUCHMANN,

*Petitioner,*

v.

MURPHY OIL U.S.A. INC.,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## REPLY BRIEF

WAYNE J. DUCHMANN
Petitioner
3209 Cleary Ave., Apt. #2
Metairie, Louisiana 70002
(504) 610-8320

## NEW QUESTIONS PRESENTED

(1) Would Murphy Oil's Counsel have engaged in obstruction of Justice with intent to deny, delay, hinder, intimidate and Blackmail Mr. Duchmann's mother's Estate if Mr. Duchmann did not have standing?

(2) Does the plaintiff's counsel, Mr. Sidney Torres, III, who represented the Estate of Ms. Duchmann, have the right to file a Respondent's Brief in Opposition to Petition for a Writ of Certiorari without withdrawing as Ms. Duchmann's counsel first?

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## INTRODUCTION

Duchmann, objection of fairness and Memorandum. *See* App 2 and the footnote on App 4, Respondent's Brief in opposition to Petition for Writ of Certiorari: "Murphy has requested the district court to designate the part of the record attached hereto as Record Excerpts nos. 1-7, such record excerpts are forthcoming." The Table of Contents Lists Mr. Duchmann's objection as No. 2, a sealed record in district court. Murphy Oil's Counsel broke the Court orders and rules at will.

## LAW AND ARGUMENT

On 20th day of December 2006, the district court ordered "that the correspondence shall be filed under seal." *See* App 1. Murphy Oil USA, Inc.'s Attorney Mr. Kerry Miller disobeyed a standing court order on the under seal objection of Wayne Duchmann filed on December 15, 2006, clerk of court eastern district of Louisiana. *See* Murphy Oil USA, Inc., Record Excerpts of fifth circuit filed March 9, 2007. *See* Record Excerpt No. 2. Mr. Miller violated the Rules of Professional Conduct Rule 4.2 communicating with a person represented by counsel, when he met with Mr. Duchmann on June 8, 2006, and broke a court order.

Rule 8.4 of the Louisiana Rules of Professional Conduct is titled "misconduct,"

> conduct constituted a violation of Rules 8.4(b) (commission of a criminal act reflecting

> adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

The same observation can be made about the part (c) of the rule. Lawyers can be, and are, sanctioned for dishonesty, fraud, deceit or misrepresentation that is not directly connected with client representation. *Louisiana State Bar Assn. v. Farmer*, 537 So.2d 1148 (La. 1989) (lawyer's involvement with, and support of, a fraudulent scam "exhibits a moral unfitness to practice law").

Mr. Duchmann requested that the court take action on the matter of misconduct. *See* App 93, 94, 95, Petition for Writ of Certiorari. "Sanctions for waste court time with this mayhem, lie, fictional fact delay due process"

> "*Mr. Duchmann*: Can you also make part of the record that Mr. Kerry Miller did meet with me when you had a court order to stop him from meeting with residents in the buyout area.
>
> *The Court*: What are you –
>
> *Mr. Duchmann*: It was under a court order that he disobeyed.
>
> *The Court*: Okay. All right, Thank you very much.
>
> *Mr. Duchmann*: So that doesn't mean nothing to you?

*The Court:* Anything else from anybody?"

App 19. The court failed to act on Mr. Duchmann's request on misconduct.

The court appointed plaintiff steering committee.

Mr. Sidny Torres violated Rule 8.4(c) of professional conduct engaging in conduct of fraud and misrepresentation. As well as Rule 8.4(d) engaging in conduct prejudicial to the administration of Justice, Mr. Torres has misrepresented Ms. Duchmann's Estate. *See* App 7. Brief in Opposition to Petition for Writ of Certiorari.

Mr. Duchmann ask Sidney Torres III to withdraw as legal counsel due to misconduct. *See* App 14, Letter dated March 6, 1997. Seven years before Hurricane Katrina, where his action has endangered health and safety of the community. Receipt for certified mail Z347 868 256. *See* App 15. Sidney Torres was appointed to the plaintiff steering committee by the district court. "We wish to exclude him from the counsel that you appointed." *See* App 118. Petition for Writ of Certiorari Transcript.

Mr. Duchmann amply demonstrated abuse by Murphy Oil USA counsel on Harassment, coercion, intimidation and blackmail due to unfair settlement. *See* App 5.

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## FRAUD OR COLLUSION

A strong presumption exists in favor of settlement if the district court determines that the settlement

resulted from arms-length negotiations between experienced counsel and was not tainted by fraud or collusion. *See Wal-Mart Stores*, 396 F.3d at 116-17; 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11:41 (4th ed. 2002). The suspicion of fraud and collusion is sometimes suggested by agreements of counsel regarding attorneys' fees. In private disputes such as the present case, class counsel have historically been compensated with a fee award taken directly out of the settlement fund. *See, e.g.*, William J. Lynk, *The Courts and the Plaintiff's Bar: Awarding the Attorney's Fee in Class-Action Litigation*, 23 J. Legal Stud. 185, 186 (1994). While the recovery of such "common benefit" fees from class members is based in equity, such a procedure can create a perceived or actual conflict of interest and may lead to claims of collusion.

La. S. Ct. R. XIX § 6 (noting the Disciplinary Board has jurisdiction over all attorneys admitted to practice in Louisiana, including former judges who have resumed the practice of law); full-time judges are not subject to the jurisdiction of the Attorney Disciplinary Board. Due to the inadequate representation of Mr. Torres and the element of fraud and collusion to unjust enrichment of Murphy Oil USA, this Court should note that no one was a succession at the time of the fairness of settlement. *See* App 3. That the search has been conducted through this date January 3, 2007; That the Succession of Henry Duchmann, Sr., filed May 10, 2006, is attached hereto; and marked as Exhibit "A", and; That there

have been no Succession proceedings involving Grace Blanchard Duchmann.

However, Mr. Torres was the Court appointed attorney for Ms. Duchmann's Estate at time of the fairness hearing on January 4, 2007. He never requested to withdraw as counsel for Ms. Duchmann's Estate.

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**ON THE ISSUE OF LEGAL STANDING**

(1) However the court informed Mr. Duchmann of his right to object to the settlement program and opt-out of the class. App 47, Petition for Writ of Certiorari.

(2) Court order filed February 13, 2007. *See* App 101, Petition for Writ of Certiorari, "I will filed motion on this issuer. And the legal standing if the court request me to do so." App 102, Petition for Writ of Certiorari. The district court refused to address this issuer of legal standing and now cannot be revisited.

Mr. Duchmann is proceeding in forma pauperis. 28 USC § 1915.

> (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay

> such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

*See* App 8, district court order filed March 30, 2007. The motion is granted, the party is entitled to proceed *in forma pauperis*. Thus making defendant's $20,000.00 bond failure moot. Mr. Duchmann has always complied with all of the court rules. But Murphy Oil's counsel has not.

Mr. Duchmann is concerned about the lack of the long term study of health of the community by the E.P.A. Wayne J. Duchmann without legal counsel who believed in individual right and American Constitutional Law and establishing factual statement Testimony supporting materials Plus Exhibits, Fairness of settlement agreement is not responsible and further court review will show extraordinary hardship on elderly and handicapped citizens of St. Benard Parish issues of safety and health of the community and the elderly of all citizens of St. Benard Parish on Issues of safety and health of the community. *See* App 9-10, report from EPA dated June 27, 2007. "There is a heighten concern most likely due to the mercury – contaminated residence in the footprint of the Murphy Oil release."

## CONCLUSION

Wayne J. Duchmann/Petitioner prays that establishing of factual statement supporting materials of facts of misconduct of respondent's counsel as well as two counts of disobeying of court orders and four counts of disobeying rules of professional conduct, show that Mr. Duchmann has standing to appeal for his mother's estate under the Constitution of the United States, all other rights, privileges, and immunity are secured by Louisiana State Laws. Mr. Duchmann requests this writ be granted.

Respectfully submitted,

WAYNE J. DUCHMANN
Petitioner
3209 Cleary Ave., Apt. #2
Metairie, Louisiana 70002
(504) 610-8320

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF LOUISIANA**

| | |
|---|---|
| **PATRICK JOSEPH TURNER, ET AL.** | * **CIVIL ACTION** |
| **VERSUS** | * **NO. 05-4206 CONSOLIDATED CASE** |
| **MURPHY OIL USA, INC.** | * **SECTION "L" (2)** |

* * * * * * * * *

**THIS DOCUMENT RELATES TO ALL CASES**

ORDER

The Court received the attached correspondence regarding objections to the class settlement program. IT IS ORDERED that the correspondence shall be filed under seal and the Clerk of Court shall forward copies of this order and the attached correspondence to liaison counsel for the Plaintiff Class and the Defendant. IT IS FURTHER ORDERED that the Clerk of Court shall forward a copy of this order to the parties named below to confirm receipt of correspondence.

New Orleans, Louisiana, this 20th day of December 2006.

/s/ [Illegible]
UNITED STATES DISTRICT JUDGE

cc:
Sidney D. Torres, III
Law Offices of Sidney D. Torres, III
1290 7th Street
Slidell, LA 70043

Kerry J. Miller
Frilot, Partridge, Kohnke & Clements
Energy Centre
Suite 3600
1100 Poydras Street
New Orleans, Louisiana 70163-3600

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF LOUISIANA**

| | |
|---|---|
| **PATRICK JOSEPH TURNER, ET AL** | * **CIVIL ACTION NO. 05-4206** * **CONSOLIDATED CASES** |
| **Plaintiffs** | * **SECTION "L"** |
| **VERSUS** | * **MAGISTRATE "2"** |
| **MURPHY OIL USA, INC** | * |
| **Defendant** | * |

**AFFIDAVIT**

BEFORE ME, the undersigned authority, personally came and appeared, DANIEL L. DYSART, who after being duly sworn did depose and say that:

1. He has conducted a search of civil records of the Clerk of Court's office for St. Bernard Parish;

2. That the search has produced no proceedings filed regarding a Succession of Grace Blanchard Duchmann;

3. That the search has been conducted through this date January 3, 2007;

4. That the Succession of Henry Duchmann, Sr., filed May 10, 2006, is attached hereto; and marked as Exhibit "A", and;

5. That there have been no Succession proceedings involving Grace Blanchard Duchmann.

/s/ [Illegible]
DANIEL L. DYSART

**SWORN TO AND SUBSCRIBED**
Before me this 3rd day of January, 2007.

/s/ [Illegible]
NOTARY PUBLIC
A.J. Krouse (#14426)

Frilot Partridge L C
1100 Poydras Street, Suite 3800
New Orleans, Louisiana 70163

504 599 8000 phone
504 599 8100 fax
www.frilotpartridge.com

**FRILOT PARTRIDGE**

**Kerry J. Miller**
**Telephone: (504) 599-8194**
**Facsimile: (504) 599-8145**
**E-mail:**
**KMiller@frilotpartridge.com**

March 2, 2007

**BY HAND DELIVERY AND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Mr. Wayne J. Duchmann
3209 Cleary Avenue #2
Metairie, LA 70002

Re: Patrick Joseph Turner, et al
v. Murphy Oil USA, Inc.
C.A. No. 05-4206 (All Cases) "L"(2)
Our File: 3-050653

Dear Mr. Duchmann:

Attached is the Court's Order imposing a $20,000 cost bond on you in connection with your Notice of Appeal. Please be aware that under the Federal Rules of Appellate Procedure and the Rules of the Fifth Circuit Court of Appeals, your failure to comply with the Order and post a bond will result in a prompt dismissal of your Notice of Appeal and termination of any appeal rights you may possess.

Murphy has attempted to negotiate with you and your family in good faith to resolve the potential claim of your Mother's estate in connection with the oil spill following Hurricane Katrina. In this vein, there is an outstanding offer from Murphy to settle the claims of Mrs. Duchmann's estate, including buyout of her property, for $112,000. As you and your family are aware, this is a very generous offer. This offer will remain on the table until 5:00 p.m. on Monday, March 5th. The offer of course requires that you voluntarily dismiss, with prejudice, your Notice of Appeal. If this matter is not resolved by Monday at 5:00, then Murphy's offer will go down to $90,000 and will remain open until Tuesday, March 6th at 5:00 p.m. If the matter is not resolved by Tuesday, March 6th for $90,000. Murphy's offer will go down to $80,000 and will remain on the table until Wednesday, March 7th. If the matter is not resolved by Wednesday, March 7th at 5:00 p.m. Murphy will revoke any and all settlement offers to the Duchmann Estate.

Murphy is currently preparing its Motion to Dismiss your Notice of Appeal in the Fifth Circuit. Murphy is extremely confident that it will succeed in its Motion to Dismiss in short order. You should also be aware that no one representing Mrs. Duchmann's estates has filed a Proof of Claim form in connection with the Murphy oil spill class settlement. The deadline to file was January 31, 2007. As such, under the law, any future claim to be made by the Duchmann estate is barred.

In conclusion, I strongly encourage the Duchmann family to accept the offer outlined in this letter. Failure to accept this offer will lead to the dismissal of the Notice of Appeal by the Fifth Circuit at your cost, and the revocation of any and all settlement offers by Murphy. Please contact Danny Dysart on behalf of Murphy with your response.

Sincerely,

/s/ Kerry J. Miller
Kerry J. Miller

KJM/sc

Enclosure

cc: **(via e-mail)**
Honorable Eldon E. Fallon
Sidney Torres, III Esq.
Mr. Henry Duchmann
Daniel Dysart, Esq.
Joseph Bruno, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

| | |
|---|---|
| WAYNE JOSEPH DUCHMANN | CIVIL ACTION |
| | NO. 05-4206 |
| VERSUS | SECTION 1(2) |
| MURPHY OIL USA, INC. | (Filed Mar. 30, 2007) |

**ORDER**

Considering the application and affidavit to proceed *in forma pauperis*.

**IT IS ORDERED** that:

☒ the motion is GRANTED; the party is entitled to proceed *in forma pauperis*.

☐ the motion is DENIED; the party has sufficient funds to pay the filing fee.

☐ the motion is DENIED; the party is not entitled to proceed *in forma pauperis* for the listed reasons:

_____

_____

_____

_____

New Orleans, Louisiana, this 30th day of March, 2007.

/s/ [Illegible]
UNITED STATES
DISTRICT JUDGE

7/22/2007

Wayne,

Below, is the latest EPA pollution report on the mercury spill. I hope this information is helpful.

Site Description

On 27 June 2007, the Louisiana Department of Environmental Quality (LDEQ) contacted the EPA Region 6 hotline to report a mercury release at a home in Chalmette Louisiana. The EPA subsequently notified the National Response Center (NRC 840234) of the release. The release was originally reported to the LDEQ by the Children's Hospital of New Orleans, La. The residents' youngest child became ill a few weeks ago and was being treated at the Children's Hospital. After several examinations, the residence brought to the doctor's attention that they recently had found mercury within their home. The child was then tested for mercury poisoning, and tests indicated that the child had mercury levels approximately 40-70 times that of normal levels.

On 28 June, an assessment of the residence was conducted. Initial air monitoring conducted indicated levels of mercury in air of up to 60 micrograms per cubic meter (pg/m3). On the morning of 29 June, ERRS was verbally tasked to conduct a site walk identified. All members of the family except the daughter have elevated levels of mercury in their systems.

There is a heighten community concern most likely due to the mercury-contaminated residence being in the footprint of the Murphy Oil release. However, numerous analytical results of the materials from the Murphy Oil release indicated non-detects for mercury.

Beverly Negri
Site Assessment & Community Involvement Team Leader
214.665.8157 or 1-800-553-3508 (Toll Free)
FAX 214.665.6660
negri.beverly@epa.gov

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF LOUISIANA**

| | |
|---|---|
| **PATRICK JOSEPH TURNER, ET AL.** | * **CIVIL ACTION** |
| **VERSUS** | * **NO. 05-4206 CONSOLIDATED CASE** |
| **MURPHY OIL USA, INC.** | * **SECTION "L" (2)** |

* * * * * * * * *

**THIS DOCUMENT RELATES TO ALL CASES**

**ORDER**

(Filed Aug. 3, 2007)

The Court received the attached correspondence from Mr. Wayne J. Duchmann. IT IS ORDERED that the correspondence shall be entered into the record and the Clerk of Court shall forward copies of this order and the attached letter to Mr. Duchmann, liaison counsel for the Plaintiff Class and the Defendant.

IT IS FURTHER ORDERED that liaison counsel for the Plaintiff Class and the Defendant shall file their response, if any , to the allegations contained in Mr. Duchmann's letter within five (5) days; Mr. Duchmann will have five (5) days to which to reply to any response filed by liaison counsel for the Plaintiff Class and the Defendant.

IT IS FURTHER ORDERED that hereafter whenever Mr. Duchmann enters the Courthouse he shall be escorted by a Court Security Officer from the

security station on the first floor of 500 Poydras Street at all times. The security conditions surrounding all meetings shall be determined by the marshal's Office and Court Security Officers.

New Orleans, Louisiana, this 3rd day of August, 2007.

/s/ [Illegible]
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

| | |
|---|---|
| PATRICK JOSEPH TURNER, ET AL | CIVIL ACTION |
| | NO. 05-4206 |
| VERSUS | CONSOLIDATED |
| MURPHY OIL USA, INC. | CASES |
| | SECTION "L" (2) |

* * * * * * * * * * * * * * * * * * * * * * * * * *

**ORDER**

All counsel are ordered to attend a status conference on **Monday, September 10, 2007 at 3:00 p.m.** in the courtroom of Judge Eldon E. Fallon.

All counsel must bring their calendars and be prepared to discuss the scheduling of the depositions requested in connection with this matter.

No request to reschedule this conference will entertained.

New Orleans, La. this 4th day of September, 2007

/s/ Robert J. Klees
Hon. Robert J. Klees (Ret.)
Special Master

(St. Bernard Parish)

95-8500

Wayne J Duchmann
2224 Jacob Dr.
Chalmette La 70043

Sidney Torres III
8301 W. Judge perez Dr
Ste 303

Due to lack of proper legal assistance to insure cooprate in emergncy planning pross. that endange, jeopary the helth and safty.

also hight level contamation without due compenstion.

You are dismiss for all past an furter leagal matter in the class actions.

95-8500

/s/ Wayne Duchmann
3/6/97

Z 347 868 256

US Postal Service
**Receipt for Certif'ed Mail**
No Insurance Coverage Provided.
Do not use for International Mail (*see reverse*)

| | |
|---|---|
| Sent to<br>Sidney Torres III | |
| Street & Number<br>8301 W Judge ~~perz~~ Perez | |
| Post Office, State, & Zip Code<br>Ste. 303 Chalmett LA 70043 | |
| Postage | $ 55 |
| Certified Fees | 110 |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to Whom & Date Delivered | 110 |
| Return Receipt (Showing to Whom, Date & [Illegible] Address) | |
| **TOTAL** Postage & Fees | $ 275 |
| Postmark or Date<br>[MAR 6 1997] | |

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete Items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back of space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

Is your RETURN ADDRESS completed on the reverse side?

3. Article Addressed to:
   Sidney D Torres III
   8301 W Judge Perez Dr
   Chalmette LA 70043
   Ste 303

4. Received By: (*Print Name*)
   /s/ [Illegible]

5. Signature: (*Addressee or Agent*)
   /s/ [Illegible]

| | |
|---|---|
| 4a. Article Number<br>ZX 347 868 256 | |
| 4b. Service Type | |
| ☐ Registered | ☑ Certified |
| ☐ Express Mail | ☐ Insured |
| ☐ Return Receipt for Merchandise | ☐ C.O.D. |
| 7. Date of Delivery<br>3-7-97 | |
| 8. Addressee's Address (*Only if requested and fee is paid*) | |

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

| | | |
|---|---|---|
| PATRICK JOSEPH TURNER, ET AL | * | Docket 05-CV-4206-L |
| | * | New Orleans, Louisiana |
| versus | * | January 4, 2007 |
| MURPHY OIL USA, INC. | * | |
| * * * * * * * * * * | | |

PROCEEDINGS BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Law Offices of Sidney D. Torres
BY: SIDNEY D. TORRES, ESQ.
8301 W. Judge Perez Drive
Suite 303
Chalmette, Louisiana 70043

For the Plaintiffs: Gainsburgh, Benjamin, David, Meunier & Warshauer
BY: GERALD MEUNIER, ESQ.
Energy Centre
1100 Poydras St.
Suite 2800
New Orleans, Louisiana 70163-2800

For the Defendants: Frilot, Partridge, Kohnke & Clements
BY: KERRY J. MILLER, ESQ.
ALLEN J. KROUSE, III, ESQ.
1100 Poydras Street, Suite 3600
New Orleans, Louisiana 70163

Also Present: Governor
Kathleen Babineaux Blanco

* * *

[51] MR. DUCHMANN: Can you also make part of the record that Mr. Kerry Miller did meet with me when you had a court order to stop him from meeting with residents in the buyout area?

THE COURT: What are you –

MR. DUCHMANN: It was under a court order that he disobeyed.

THE COURT: Okay. All right. Thank you very much.

MR. DUCHMANN: So that doesn't mean nothing to you?

THE COURT: Anything else from anybody?

* * *

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